

**Bangalore Urban 3rd Addl. District Consumer Disputes Redressal Forum
No.8, 6th Floor, Sahakara Bhavan, Cunningham Road, Bangalore-560 052.**

Complaint Case No. CC/12/345

1. Kiran Kumar.P

No.99/4, 2nd Main, 6th Cross,
Govindarajanagar, Bangalore-560 040.

.....Complainant(s)

Versus

1. Bangalore University

Jnanabharathi,Bangalore-560 056. Rep by
Registrar(Evaluation)and Public Information
Officer.

.....Opp.Party(s)

BEFORE:

HONORABLE T. Rajashekharaiiah PRESIDENT

HONORABLE H.M.SHIVALINGAPPA Member

PRESENT:

ORDER

DATED THIS THE 7th DAY OF AUGUST 2012

CONSUMER COMPLAINT NO.345/2012

PRESENT:

Sri. T. Rajashekharaiiah B.A. LL.B.,
PRESIDENT

Sri. H.M.Shivalingappa, B.Sc., LL.B.,

MEMBER

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| COMPLAINANT | - | <i>Kiran Kumar. P, No.99/4, 2nd Main, 6th Cross, Govindarajnagar, Bangalore-560 040.</i> |
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V/S

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| OPPOSITE PARTY | - | <i>The Vice Chancellor (Evaluation) and Public Relation Officer, Bangalore University, (Gnanabharathi), Bangalore-560 056.</i> |
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ORDER

BY SRI.H.M.SHIVALINGAPPA, MEMBER

1. This Complaint was filed on 16.02.2012 under the provisions of the Consumer Protection Act, 1986. The Complainant has prayed for a direction to the Opposite Party to pay a sum of Rs.90,000/- as compensation for having caused mental agony and sufferance to him and to furnish the information sought for by him in his RTI Application dt.22.2.2011 and to award costs of this proceedings.

2. The matter came to be admitted on 1.3.2012. On the submission of the Complainant, an interim order dt.1.3.2012 came to be passed by this Forum restraining the Opposite Party from destroying the subject answer sheets till disposal of this Complaint.

3. The facts of the case in brief are as follows: The Complainant had sought for supply of answer papers by making an application dt.22.2.2011 to the Opposite Party u/s 7 (1) of the Right to Information Act by paying prescribed fee. He has sought for furnishing answer papers pertaining to M.Sc, Biochemistry, II Semester, Jun/Jul-2010 bearing registration No.09CQSBO009 in respect of subject BC201;ENZYMOLGY. The Opposite Party was expected to furnish information within 2 days, but the same was not furnished by the Opposite Party. When the Complainant approached the Opposite Party on 15.3.2011, he was informed that the same cannot be furnished in view of the University Regulation as per Annexure-A2 dt.15.3.2011. According to the Complainant, the Opposite Party is not justified in refusing to furnish the information. Aggrieved by the refusal as per Annexure-A2, the Complainant approached the Karnataka State Information Commission u/s 18 (1) of the RTI Act as per Annexure-A3 dt.1.4.2011. In the meantime, the Complainant also made representation to the office of Hon'ble President of India. The said office has directed the Opposite Party through Government of Karnataka to furnish the information sought for by the Complainant. However, the Opposite Party has not furnished the same on the ground that the answer papers in question would be preserved only for 6 months. The Complainant states

that the answer papers are still with the Opposite Party and the statement of Opposite Party is false. The endorsement dt.1.12.2011 issued by the State Government (Annexure-A5) reveals that the statement of the Opposite Party is not correct. It is further stated by the Complainant that the Opposite Party has sent a letter to the Karnataka State Information Commission stating that the information sought by the Complainant has been sent to him by post on 27.6.2011. The said information is false. However, without affording an opportunity to the Complainant to explain the situation, the Karnataka State Information Commission was pleased to close the proceedings. In the circumstances, aggrieved by the acts of omission and commission on the part of the Opposite Party, the Complainant has approached this Forum with the above prayer.

4. In the version, the Opposite Party has submitted that the Complaint is not maintainable since the Complainant is not a consumer within the meaning of Section 2 (1) (d) of Consumer Protection Act, 1986 and in support of which he has relied upon the decision of the Hon'ble NCDRC in the case of Bangalore University V/s Sri.Dattari.S (RP No.1408/2005 dt.28.10.2009). The Complaint is liable to be dismissed for mis-joinder of parties in view of provisions of the Karnataka State Universities Act, 2000. U/s 3 (5) of the said Act, in a proceedings or case, University is to be represented by the Registrar. The Complainant has arrayed the Registrar (Evaluation) as Opposite Party. Hence, the Complaint is liable to be dismissed. It is further stated that in view of section 79 of the Karnataka State Universities Act, 2000, no suits or legal proceedings shall lie against and no damages shall be claimed from the University. The Opposite Party has admitted the fact that the Complainant has made application under RTI Act on 22.2.2011. According to the Opposite Party, the said application was filed after lapse of 7 months from the date of examination. As per the University Ordinances, the answer scripts will be disposed after 6 months from the date of results. Further as per University RTI Manual, the information sought by the Complainant cannot be given in view of Rule 17 of the University RTI Manual. In the circumstances, there is no deficiency in service on the part of the Opposite Party. Denying all other

allegations as false, the Opposite Party has prayed for dismissal of the Complaint.

5. The points that arise for consideration are:-

- (1) Whether the Complaint is maintainable?
- (2) Whether there is deficiency in service as alleged by the Complainant?
- (3) If so, to what relief the Complainant is entitled?

6. Our findings on the above points are:-

POINT (1):- Negative

POINT (2):- Negative

POINT (3):- As per the final order

REASONS

7. POINT NO.1: Firstly, the Opposite Party has contended that the Complaint is not maintainable since the Complainant is not a consumer within the purview of the Consumer Protection Act, 1986. In support of its contentions, it has relied upon the decision of the Hon'ble NCDRC in the case of Bangalore University V/s Sri.Dattari.S (RP No.1408/2005 dt.28.10.2009) wherein it is held that the Government Educational Institutions even if they accept some fees in the process of imparting education, conducting examinations, evaluating or revaluating answer sheets and declaring the results and finally distributing degrees, they are only discharging their statutory function and not rendering any service. Since the case on hand, arises out of acts of omission and commission on the part of the Opposite Party, pursuant to application made by the Complainant under the provisions of Right to Information Act and not in respect of collecting any fees under any of the provisions of the University Act or Regulations for service to be done, the decision relied upon by the Opposite Party has no application to the facts of the case on hand. Hence, the contention of the Opposite Party is not acceptable. Secondly, the contention of the Opposite Party is that the Complaint is bad for mis-joinder

of parties in view of provisions of the Karnataka State Universities Act, 2000. Under section 3 (5) of the said Act, in a proceedings or case University is to be represented by the Registrar. According to the Opposite Party, since the Complainant has arrayed the Registrar (Evaluation) as Opposite Party, the present case is not maintainable. Ofcourse, as contended by the Opposite Party in a case or proceeding, the University is to be represented by the Registrar. In the case on hand, the Registrar (Evaluation) has been made as Opposite Party to the proceeding. The said Opposite Party is not only Registrar (Evaluation), but also the Public Information Officer of Bangalore University. The counsel for the University has filed version on the instructions of the Registrar (Evaluation) and also filed affidavit on behalf of the University. Whether the Registrar is made party to the proceeding or Registrar (Evaluation) is made party to the proceeding either of them represents the University. In the present case, since the matter involved pertains to furnishing of information about answer sheets of the Complainant, Registrar (Evaluation) who was the PIO of the University appears to be proper party to the proceeding. Hence, the contention of the Opposite Party loses importance. Thirdly, the contention of the Opposite Party that in view of section 79 of the Karnataka State Universities Act, 2000, no suits or legal proceedings shall lie against and no damages shall be claimed from the University also holds no water for the reason that the said section pertains to the acts done by the University in good faith. Since the present case has arisen out of non-furnishing of the information by the Opposite Party to the application of the Complainant under RTI Act, the immunity of protection of acts done in good faith will not come into picture. Hence, the contention is not acceptable.

8. However, from the facts of the case on hand, it is seen that aggrieved by non-furnishing of information by the Opposite Party as per endorsement dt.15.3.2011, the Complainant has approached the Karnataka State Information Commission u/s 18 (1) of the RTI Act on 1.4.2011. It is submitted by the Complainant that the said appeal before the Karnataka State Information Commission came to be disposed of relying upon the information furnished by the Opposite Party to the effect that the

information sought for by the Complainant has been furnished to him through post on 27.6.2011. According to the Complainant, the observation of the Karnataka State Information Commission is based on the false statement of the Opposite Party and one sided view without affording an opportunity to the Complainant to explain the things. A perusal of the order dt.24.1.2012 of the Karnataka State Information Commission (Annexure-8 to the Complaint), it reveals that though the Commission observed about the statement of Opposite Party regarding furnishing of information to the Complainant on 27.6.2011 in its order, regarding delay in furnishing the information to the Complainant, it has issued Show Cause Notice to the Registrar (Evaluation) PIO of Bangalore University and the matter stood adjourned to 28.5.2012. The above facts and figures show that the Complainant approached this Forum on 16.2.2012 and at the same time, aggrieved by non-furnishing of information by the Opposite Party approached the Karnataka State Information Commission in appeal on 1.4.2011 and participated in the proceeding. In the matter before the Karnataka State Information Commission, he has prayed for the same relief regarding furnishing of information pertaining to his answer sheet. Since the Complainant has exercised his right of appeal against non-furnishing of information by the Opposite Party, the scope for agitating his grievance before the Karnataka State Information Commission or before the higher authorities under the RTI Act is wide open. Hence, the present Complaint is not maintainable. That apart, when the Complainant alleges falsehood, cheating, misrepresentation and misleading of facts against the Opposite Party, regarding disposal of his answer sheets, the same cannot be investigated into in the present summary proceedings. On this ground also, the Complaint is not maintainable. Accordingly, point No.1 is held in the negative.

9. POINT NO.2: It is the consistent statement of the Opposite party that the Complainant has made his application for furnishing the answer sheets on 22.2.2011 exactly after 7 months from the date of examination. Since the Complainant has sought for information pertaining to 1st semester held in Jun/Jul-2010, it is more than 7 months as stated by the

opposite Party. According to the submission of the Opposite Party, supported by documentary evidence, under Rule 17 of the University RTI Manual, the information sought for by the Complainant could not be furnished. Only answer papers pertaining to under graduation can be furnished and there is no provision to furnish answer papers pertaining to post graduation. That part, the University can retain the answer papers only for 6 months after announcement of results and thereafter, the same will be subjected to disposal and hence, they are unable to furnish the same. When the Opposite party asserts that answer papers sought for by the Complainant are not available and cannot be furnished, there is no meaning in seeking for production of the same by the Opposite Party, particularly in the absence of any proof to show the existence of such answer papers in the custody of the Opposite Party. Although the Complainant has relied upon Annexure-A5 wherein it is written “*F ¼ÀÀæzÀ°è ,ÀjAiÀiÁzÀ “ÀiÁ»w-Ä®è*” to show that the statement of the Opposite Party is not correct, from a perusal of the same, it is not clear to which transaction the said statement pertains and who has written those words and to whom. Except making bald allegation against the Opposite Party and against the proceedings of the Karnataka State Information Commission, the Complainant has not come out with a clear case of deficiency in service. Accordingly, this point is held in the negative.

10. POINT NO.3: In view of our findings on Point Nos.1 and 2, this point does not survive for consideration. The Interim Order granted on 1.3.2012 stands vacated. Hence, we pass the following:

ORDER

The Complaint fails and is dismissed. No costs.

This Order is pronounced on this the 7th day of August 2012.

H.M. SHIVALINGAPPA

MEMBER

T. RAJASHEKHARIAH

PRESIDENT

[HONORABLE T. Rajashekharaiiah]
PRESIDENT

[HONORABLE H.M.SHIVALINGAPPA]
Member